

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7518

Amended Petition of Vermont Community Wind)
Farm LLC for a certificate of public good,)
pursuant to 30 V.S.A. § 248(j), authorizing the)
installation and operation of a temporary wind)
measurement tower and associated equipment on)
Herrick Mountain in the Town of Ira, Vermont)

Order entered: 8/28/2009

I. INTRODUCTION

This case involves a petition filed by Vermont Community Wind Farm LLC ("Vermont Community Wind") requesting a certificate of public good under 30 V.S.A. § 248(j) to install a temporary wind measurement tower and associated equipment on site on Herrick Mountain in Ira, Vermont. The original petition, filed on February 26, 2009, included a proposal for three measurement towers in Ira, one on Herrick Mountain, one on Train Brook Peak ("Train Brook"), and one on Susie's Peak. On May 5, 2009, Vermont Community Wind withdrew the portion of the petition for the tower on Susie's Peak, due to a change in location of the tower, and filed a new petition that will be considered in a separate docket. On July 2, 2009, Vermont Community Wind withdrew the portion of the petition for the tower on Train Brook.

In today's Order, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

II. PROCEDURAL HISTORY

On February 26, 2009, Vermont Community Wind filed a petition requesting a certificate of public good under 30 V.S.A. § 248(j) to install three, sixty-meter, temporary wind measurement towers and associated equipment on three sites in Ira, Vermont. Vermont Community Wind is exploring the feasibility of constructing one or more wind generation facilities in this area. The towers and associated equipment will generate data about wind speed

and direction, and other factors, that will be used to further evaluate the economics of the possible project.

On March 17, 2009, Vermont Public Service Board ("Board") staff requested additional information on the petition. On April 23, 2009, Vermont Community Wind filed a modification to its petition and supplemental testimony in response to that request. In that filing, Vermont Community Wind proposed to move, by approximately 600 feet, one of the measurement-tower sites to the town of Clarendon.

On May 5, 2009, Vermont Community Wind filed an amended petition requesting that the Board proceed with its review of the two proposed measurement-tower sites (Herrick Mountain and Train Brook) in Ira, Vermont.¹ The amended petition was accompanied by prefiled testimony, proposed findings, and a proposed order pursuant to the requirements of 30 V.S.A. § 248(j).

Notice of the amended petition was sent on May 15, 2009, to all entities specified in 30 V.S.A. § 248(a)(4)(c) and other interested parties. The notice stated that any party wishing to submit comments as to whether the petition raises a significant issue with respect to the substantive criteria of 30 V.S.A. § 248 needed to file comments with the Board on or before June 16, 2009. A similar notice of the filing was published in the *Rutland Herald* on May 19 and May 26, 2009.

In a May 15, 2009, Board memorandum, Board staff requested comments on whether, if the petition is granted, the certificate of public good should include the requirement of a pre-construction rare plant inventory verifying that rare plant species are not impacted.²

The Board received numerous public comments on the petition, which are addressed in the next section of this Order. The Board also received a June 15, 2009, letter from the Town of Ira. The Town of Ira raises several concerns with regard to the petition, including whether the Town was provided the requisite 45-day advance submission for purposes of Section 248(f).

1. On May 5, 2009, Vermont Community Wind also filed a new, separate petition for a certificate of public good addressing the third site (Susie's Peak in Clarendon, Vermont), that the Board is addressing in a separate docket.

2. Supplemental testimony, filed by Vermont Community Wind on April 23, 2009, indicated that rare plant species are not likely to inhabit the proposed tower areas, but the conclusion was made without a rare plant inventory because the site assessment was conducted too early in the growing season.

On June 16, 2009, the Agency of Natural Resources ("ANR") and the Vermont Department of Public Service ("Department"), respectively, filed letters stating that the petition does not raise a significant issue with respect to the criteria of Section 248 and a certificate of public good should be issued. ANR commented that the certificate of public good should include the requirement of a pre-construction rare plant inventory verifying that rare plant species are not impacted. ANR indicated that the proposed project should not have a significant impact with respect to other natural resource issues, given Vermont Community Wind's plans to access the tower site through the use of existing all-terrain, logging, or skidder trails. The Department and ANR also requested the opportunity to provide additional comments if Vermont Community Wind filed a response to the Town of Ira's letter.

In a June 19, 2009, letter, the Board requested that Vermont Community Wind respond to the Town of Ira's claim that it did not receive the requisite 45-day advance submission for purposes of Section 248(f), and observed that Vermont Community Wind may wish to address other concerns raised by the Town of Ira, the parties, or members of the public.

On July 2, 2009, Vermont Community Wind filed an amended petition withdrawing its request to site a measurement tower on Train Brook, and thus requested that the Board proceed with its review of the proposed measurement tower site on Herrick Mountain. Vermont Community Wind's filing included a letter, supplemental testimony, and exhibits addressing several of the concerns raised by the Town of Ira, the parties, and members of the public. Vermont Community Wind's filing also included supplemental testimony and an exhibit addressing a rare, threatened, or endangered plant species inventory conducted in June 2009.

On July 9, 2009, the Department filed a letter stating that it had reviewed the comments filed in the docket and reviewed Vermont Community Wind's July 2 filing. The Department indicated that it continues to believe that the petition does not raise a significant issue with respect to the criteria of Section 248 and a certificate of public good should be issued. ANR made no additional responsive filing.

III. PUBLIC COMMENTS

Wind Generation Project

Comments regarding the proposed project were filed with the Board by many interested parties in the project area, including the Town of Ira. One commenter supported the proposed project. The Town of Ira noted that over 100 residents of the town have signed a petition in opposition to the project. Several commenters filed comments raising objections to a possible wind generation project in the Town of Ira.

Discussion

It is important to clarify the limited scope of the proposal that is currently before the Board. Vermont Community Wind is seeking approval for a temporary wind measurement tower that will be in place for no more than five years. While it is true that measurement towers are necessary precursors for a wind generation facility, they are not such a facility and it is uncertain whether Vermont Community Wind will ever petition the Board for approval for such a facility. Any subsequent request for approval to construct a wind generation facility will be subject to a separate proceeding and will afford interested persons the opportunity to comment on the proposal. Furthermore, if the future petition for a wind generation facility at this site is filed, the facility's compliance with Section 248 criteria will be reviewed at that time. Consequently, the analysis of the current petition must be confined to the impacts of the temporary wind measurement tower.

Request for Public Hearing

Many commenters called for a public hearing to address the impacts of the temporary wind measurement tower. Some of these commenters argued that Vermont Community Wind had not conducted a complete evaluation of the substantive criteria of 30 V.S.A. § 248 and § 6086. Specifically, some commenters raised concerns that the petition did not address sufficiently wildlife impacts, especially with regard to rare plant surveys, and that the petition did not address impacts on logging roads. Some commenters raised concerns with regard to impacts on bat and bird populations. A few commenters raised objections to the proposed project with regard to visible impacts for property owners and recreational users of the Herrick Mountain

project area. One commenter argued that the petition should be denied because existing wind maps provided by the American Wind Energy Association indicated that the area is not a good resource for wind generation.

The Town of Ira also requested that a public hearing should be held so that parties may participate, and that the Board can be satisfied that Vermont Community Wind has the necessary legal rights and access to the proposed wind measurement tower sites, and no potential harm exists for rare, threatened or endangered plants. The Town also requested that a rare plant inventory be required before Vermont Community Wind begins construction.

Discussion

As discussed below in the findings under 10 V.S.A. § 6086(a)(8)(A) related to necessary wildlife and endangered species, the proposed project will have no impact on rare, threatened or endangered plants. In addition, as discussed below, Vermont Community Wind has sufficiently addressed the issue of property access, and the Board has no jurisdiction to rule upon complaints of trespass. Furthermore, as discussed elsewhere in this Order, the petition has effectively addressed the issues raised with respect to the criteria of Section 248, and will not unduly interfere with the orderly development of the region. Therefore, given that the petition has effectively addressed the 248 criteria and because the comprehensive nature of public comments received during the Section 248(j) process sufficiently addresses the issues, the Board concludes that the Town of Ira's request, as well as other commenters' requests, for a public hearing is not necessary.

Vermont Community Wind is seeking approval for a temporary wind measurement tower, and while measurement towers are necessary precursors for a wind generation facility, the Board's approval of a wind measurement tower is not precedential with regard to any future petition for a wind generation facility. The Board notes that it has denied approval of a petition for a wind generation facility after approval of a temporary wind measurement tower.³ Any subsequent request for approval to construct a wind generation facility will be subject to a separate proceeding and will include a public hearing as part of the Section 248 process.

3. Docket 6748, Order of 10/4/02; approving wind measurement tower on East Mountain; Docket 6911, Order of 7/17/06, denying the wind generating facility proposed for the site.

Notification Under Section 248(f)

Some commenters, including the Town of Ira, questioned whether Vermont Community Wind provided the requisite 45-day advance submission for purposes of Section 248(f).

Discussion

Section 248(f) requires that "plans for the construction of such a facility within the state must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall wave such requirement."

The February 23 petition filed by Vermont Community Wind indicates some confusion on the part of Vermont Community Wind as to the requirements of section 248(f). Page 8 of the prefiled testimony of Mr. White-Hanson indicates that a "45-day notice" is not required for a MET tower petition. In a March 17, 2009, letter to Vermont Community Wind, the Board stated that it cannot begin its consideration of the petition until the filing requirements of 248(f) have been met, and requested that Vermont Community Wind provide the dates and any supporting documentation on the filings about the proposed project submitted to the Ira Town Clerk, Selectboard and Planning Commission and the Rutland Regional Planning Commission so that the Board may determine the start of the 45-day period. On April 23, 2009, Vermont Community Wind filed a modification to its petition and supplemental testimony. The Board then sent notice of the filing on May 15, 2009, to all entities specified in Section 248(a)(4)(c) and all other interested parties.

In a July 2, 2009, letter to the Board, Vermont Community Wind clarified that it had sent an initial letter and map to the Board, to the Town of Ira Selectboard, to the Ira Planning Commission, and to the Rutland Regional Planning Commission on February 2, 2009.⁴ The July 2 letter and supplemental testimony of April 23, 2009, also indicated that Vermont Community Wind had mailed a copy of the February 23 petition filed with the Board to the Town of Ira Selectboard, to the Ira Planning Commission, and to the Rutland Regional Planning Commission on February 26, 2009. Because the Board did not act on the petition until it issued the notice on

4. July 2, 2009, letter from Andrew N. Raubvogel and Rebecca E. Boucher on behalf of Vermont Community Wind to Susan M. Hudson, Clerk of the Board.

May 15, 2009, the Board concludes that the Town of Ira and the Rutland Regional Planning Commission were provided the requisite 45-day advance submission for purposes of Section 248(f).

A few commenters also raised the issue that Vermont Community Wind had not provided 45-day notice to the towns that host access roads to the proposed tower sites. Section 248(f) requires plans for construction to be submitted to the municipal and regional planning commissions. The petition, as noted in findings 9 and 33 below, indicates that access to the proposed site will utilize only existing roads and all-terrain-vehicle trails and will not require new construction or improvements to these roads and trails. Because there is no construction or improvements, there is no requirement under Section 248(f) to provide notice to the towns that host access roads to the proposed tower sites.

Trespassing and Access of Property

Several commenters raised the issue of trespassing and the installation of unauthorized equipment. Commenters claimed that several landowners have found monitoring equipment installed on private property without permission, and reported that Vermont Community Wind has accessed proposed project sites by trespassing on private property without permission. One commenter stated that Vermont Community Wind had installed wind measurement equipment on an existing radio tower on Herrick Mountain without proper authorization. Some commenters questioned whether Vermont Community Wind had obtained lease agreements with private landowners for access to properties in Ira in order to install and operate wind measurement equipment. Other commenters stated that Vermont Community Wind had not obtained permission to use the existing all-terrain-vehicle trails and logging or skidder roads being used to access the proposed site. One commenter argued that the disregard for property rights would unduly interfere with the orderly development of the region and have adverse effects on the natural environment and public health and safety as set forth in Sections 248(b)(1) and 248(b)(5).

The Town of Ira also stated that the selectboard has received complaints from property owners near the proposed meteorological ("MET") tower site on Herrick Mountain that Vermont Community Wind had trespassed and placed unauthorized equipment on their properties. On

behalf of potentially affected owners, the town requested that the Board require Vermont Community Wind to specifically identify by survey the lands over which it will have access to the proposed MET sites, and the actual MET sites, showing actual distances to adjacent property owners and to municipal boundary lines before construction or road improvements are undertaken.

Discussion

As indicated in finding number 4, below, Vermont Community Wind has entered into a lease agreement with a private landowner for use of the property and access road on Herrick Mountain to install and operate the proposed MET tower. Vermont Community Wind's July 2, 2009, supplemental testimony and exhibits provided copies of its lease agreements and boundary maps and provides sufficient detail for the Board to review the potential impact under the criteria of Section 248.⁵

The town also raised the issue in an April 23 letter filed by Vermont Community Wind indicated that the existing radio tower on Herrick Mountain was not related to the proposed project, but at a meeting with the Ira selectboard, Vermont Community Wind had informed the town that it had installed wind measuring equipment on that radio tower. In its July 2 letter, Vermont Community Wind indicated that it has placed equipment for bird and bat migration studies in the Herrick Mountain area and installed sensors on the existing radio tower to provide correlative weather information for the bird and bat equipment. Vermont Community Wind maintained that the collection of the information is not part of its MET tower application and its temporary investigatory activities associated with a pre-petition wind farm project are not under Board jurisdiction.

In its July 9 filing, the Department indicated that it is treating as a separate matter the question of whether the equipment used for environmental investigations constitute "site preparation" in violation of Section 248. The Department stated it is continuing to look into this matter and will inform the Board only if it believes that Vermont Community Wind has violated

5. The Board does not have jurisdiction over property disputes, and instead is limited in this proceeding to a review of the proposed project under the Section 248 criteria. It is up to the proposed project petitioner to ensure that it has appropriate legal rights to use planned access routes, and any disputes over those property rights are a matter for the civil courts, not this Board.

Section 248 by placing this environmental equipment in the vicinity of the MET tower location. The Board agrees that this matter is separate from the MET tower petition and will not be addressing this issue in this docket.

In its July 2 letter, Vermont Community Wind admitted that it had inadvertently placed bird/bat equipment on property for which it did not have a lease agreement, and when notified of the error, worked to remove the monitoring equipment as quickly as possible. Vermont Community Wind has stated that it has developed updated property maps to avoid future property boundary issues. While the issue of trespass on private property does not fall under the Board's jurisdiction, we expect that Vermont Community Wind will work with landowners to avoid future property boundary issues.

Jurisdiction Under Section 248

One commenter argued wind measurement towers do not fall within the scope of the Board's jurisdiction and should not be reviewed under Section 248. The commenter stated that wind measurement towers are not electric generation or electric transmission facilities under Section 248(a)(2)(A) and questioned the Board's jurisdiction to issue a certificate of public good notwithstanding its assertion of jurisdiction in Docket 7346. Furthermore, even if the wind measurement tower was construed to be an "electric generation facility", the commenter questioned whether "site preparation" encompasses the installation of a tower with anemometers and other wind measurement equipment.

Discussion

The Board has previously examined the issue of its jurisdiction over wind measurement towers in Dockets 6884 and 7037.⁶ The Board concluded in those dockets that it does have jurisdiction over wind measurement towers because such towers are a necessary precursor to wind generation facilities. In addition, 30 V.S.A. § 246 has now firmly established Board authority over the temporary siting of meteorological stations.

6. Docket 6884, Order of 4/21/04; Docket 7037, Order of 7/29/05.

IV. FINDINGS

1. The petitioner is a Vermont company, formed for the purpose of developing a utility-scale wind generation facility in Vermont. The petitioner is a corporation as defined by 30 V.S.A. § 201 and as such is subject to the Board's jurisdiction. White-Hansen pf. at 1.
2. The proposed project includes the installation and operation of one wind measurement tower and associated equipment on a site in Ira, Vermont. The proposed tower will collect wind speed, wind direction, temperature and other meteorological data at several different heights. The measurements will help determine whether the areas are suited for placement of wind turbines and economically viable for wind power development. White-Hansen pf. at 1-2.
3. The location for the proposed MET tower is a site close to the top of Herrick Mountain located at an elevation of approximately 2550 feet above sea level. The proposed tower will be approximately 200 feet from an existing radio tower on Herrick Mountain. White-Hansen pf. at 2-3; exh. PWH-1 at Figure 6; exh. PWH-2 at Picture 1.
4. Vermont Community Wind has entered into a lease agreement with a private landowner for use of the undeveloped property and access road on Herrick Mountain to install and operate the proposed MET tower. White-Hansen pf. at 2; White-Hansen second supp. pf. at 2; exh. PWH-6.
5. The proposed tower will be guyed, made of galvanized steel, 6 to 10 inches in diameter, tubular, and up to 197 feet in height. The equipment to be installed at the site will consist of the tower itself and a variety of meteorological sensors mounted on the tower to measure wind speed, wind direction, air temperature, and other meteorological data. Anemometers and direction sensors will be mounted at several heights on the tower. The use of both heated and unheated anemometers will allow for accurate data collection in all seasons. All the sensors will be connected to an electronic data recorder. White-Hansen pf. at 4-5; exh. PWH-2 at Figure 1.
6. The data recorder and the connected sensors on the proposed tower will be powered by a rechargeable battery. The batteries will be recharged by a photovoltaic panel mounted on the cover of the data recorder at approximately 10 feet above ground level. White-Hansen pf. at 5, 7; exhs. PWH-2 at Figures 2 and 3.

7. At the proposed tower site, tree cutting of up to one acre will be required for the tower and for guy wires in four directions. The guy wires will be secured with anchors into bedrock at four corners. The proposed tower base is an eight-square-foot steel plate that sits on the ground, secured in place by rods driven through the tower base into the soil. White-Hansen pf. at 6-8; exh. PWH-2 at Figures 4 and 9.

8. The proposed tower will be assembled in ten-foot sections laid out along the ground. The meteorological sensors, data recording equipment, and guy wires will be attached to the assembled tower sections. The tower will then be winched into a vertical position using a ginpole and a hydraulic winching system powered from a hydraulic power unit utilizing a gasoline engine. The complete assembly process, attachment of sensors and installation of the towers will take approximately one day. White-Hansen pf. at 6-7; exh. PWH-2 at Figures 4, 5, and 6.

9. Access to the proposed site for construction and routine maintenance will be by four-wheel drive vehicles, all-terrain vehicles, or snowmobiles over existing all-terrain vehicle trails, logging roads, or skidder roads that Vermont Community Wind has authority to travel. Data collection at the proposed tower will occur remotely using a cell-phone system located at the tower data logger to send measurement data once a day to a remote computer. White-Hansen pf. at 7; exh. PHW-2 at Figures 8A and 8B; White-Hansen second supp. pf. at 2; exh. PWH-6.

10. The wind measurement data from the proposed tower site will be collected for up to five years. If the wind resource at the proposed site is found not to be adequate for development of a wind energy project, the tower hardware and associated equipment will be disassembled and removed from the site. Guy anchors will be removed, or will be cut below grade if they prove difficult to remove. The removed tower sites will allow re-vegetation to occur naturally. If the wind source at the proposed sites is found to be adequate for the development of a wind energy project, Vermont Community Wind may apply for certificate of public good, which may include a request to have the proposed MET tower remain as part of the wind project. White-Hansen pf. at 8.

Orderly Development of the Region

[30 V.S.A. § 248(b)(1)]

11. The proposed project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality. This finding is supported by findings 12 through 14, below.

12. The proposed project will be on private land, involve no electricity transmission or distribution, and will have limited visibility. The proposed project is temporary in nature, and is proposed to be removed at the end of five years, unless Vermont Community Wind applies and is granted Board approval for a certificate of public good to develop a wind energy project. White-Hansen pf. at 17.

13. On February 26, 2009, Vermont Community Wind filed a copy of the petition for the proposed project to the Ira Selectboard, the Ira Planning Commission, and the Rutland Regional Planning Commission. White-Hansen supp. pf. at 2.

14. There is no Ira Town Plan currently in effect. The proposed project to investigate the development of wind energy resource is not inconsistent with the former Ira Town Plan and the Rutland Regional Plan. White-Hansen pf. at 17.

Need for Present and Future Demand for Service

[30 V.S.A. § 248(b)(2)]

15. The proposed project is not connected to the electrical grid. The proposed project is necessary to accurately estimate the quality of available wind resources and could lead to a future petition for wind energy project that would be available to provide renewably produced electricity to users in Vermont and the surrounding region. White-Hansen pf. at 7-8.

System Stability and Reliability

[30 V.S.A. § 248(b)(3)]

16. The proposed project would not be connected to the electric system and therefore would not adversely affect system stability and reliability. White-Hansen pf. at 7.

Economic Benefit to the State

[30 V.S.A. § 248(b)(4)]

17. The proposed project is an investment in property in Ira, Vermont, and would provide an economic benefit to the State. In addition, the proposed project is a necessary first step toward the development of a possible wind-powered generation project, which, if proposed, permitted and developed, could provide economic benefits to the State and its ratepayers, since that is one of the criteria for approval of such a project. White-Hansen pf. at 2, 4.

**Aesthetics, Historic Sites, Air and Water Purity,
the Natural Environment and Public Health and Safety**

[30 V.S.A. § 248(b)(5)]

18. The project, as proposed, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety. This finding is supported by findings 19 through 45, below, which are the criteria specified in 10 V.S.A. §§ 1424(a)(d) and 6086(a)(1)-(8)(a) and (9)(k).

Public Health and Safety

[30 V.S.A. § 248(b)(5)]

19. Construction and maintenance of the proposed tower will not threaten public health or safety. Access to the proposed site is generally limited to hikers and all-terrain vehicles or snowmobiles. Reflective signage warning the proximity of wind measurement equipment will be placed along the side of trails nearby the proposed MET tower, and guy wires will be identified with colorful ribbons or reflective markers. White-Hansen pf. at 9.

Outstanding Resource Waters

[10 V.S.A. § 1424(a)(d)]

20. The proposed project will not be located on or anywhere near any segment of any outstanding resource waters of the State as identified by the Water Resources Board. White-Hansen pf at 9; exh. PWH-1 at 2-3.

Air Pollution

[10 V.S.A. § 6086(a)(1)]

21. The proposed project will not result in undue air pollution and will not produce emissions or noise. White-Hansen pf. at 10.

Water Pollution

[10 V.S.A. § 6086(a)(1)]

22. The proposed project will not result in undue water pollution. This finding is supported by the specific findings under the criteria of 10 V.S.A. §§ 6086(a)(1)(A) through (G), below.

Headwaters

[10 V.S.A. § 6086(a)(1)(A)]

23. The proposed tower site will be located at elevations greater than 1,500 feet, and, therefore, is located within a headwaters region. Given that there are no streams or other surface waters documented at the proposed tower location, impacts to water quality will be minimal to non-existent. White-Hansen pf. at 10; exh. PWH-1 at 2; exh. PWH-4 at 3 and 9.

Waste Disposal

[10 V.S.A. § 6086(a)(1)(B)]

24. The proposed project will meet applicable health and environmental conservation regulations regarding the disposal of wastes. Any construction-related debris as a result of the proposed tower will be hauled off-site for disposal. On an ongoing basis, the proposed project will not generate waste. White-Hansen pf. at 11.

Water Conservation

[10 V.S.A. § 6086(a)(1)(C)]

25. The proposed project will not require the use of water. There are no sanitary facilities associated with the proposed project, and no water will be used in connection with the construction and operation of the proposed towers or equipment. White-Hansen pf. at 13.

Floodways

[10 V.S.A. §§ 6086(a)(1)(D)]

26. The proposed project is not located within a floodway or floodway fringe. White-Hansen pf. at 11.

Streams

[10 V.S.A. §§ 6086(a)(1)(E)]

27. The proposed tower site is on or near the top of ridges and not located in close proximity to any streams. Numerous streams are present along existing all-terrain vehicle trails or logging and skidder roads used to access the proposed tower. There is no expected impact on these streams because there is no proposal for upgrading these existing access routes. White-Hansen pf. at 11-12; White-Hansen supp. pf. at 2; exh. PWH-1 at 2; exh. PWH-4 at 3 and 9.

Shorelines

[10 V.S.A. §§ 6086(a)(1)(F)]

28. The proposed project is not located near a shoreline. White-Hansen pf. at 12.

Wetlands

[10 V.S.A. § 6086(a)(1)(G)]

29. The proposed tower site is not in or adjacent to wetlands identified as significant wetlands. There are wetlands located near the existing trails and roads used to access the proposed tower. There is no expected impact on these wetlands because there is no proposal for upgrading these existing access routes. White-Hansen pf. at 12; White-Hansen supp. pf. at 2; exh. PWH-1 at 2; exh. PWH-4 at 2 and 8.

Sufficiency of Water and Burden on Existing Water Supply

[10 V.S.A. §§ 6086(a)(2)&(3)]

30. The proposed project will not place a burden on the existing water supply. No water will be used in connection with the construction and operation of the proposed tower or equipment. White-Hansen pf. at 13.

Soil Erosion

[10 V.S.A. § 6086(a)(4)]

31. The proposed project will not cause an adverse impact on soil erosion. This finding is supported by findings 32 through 34, below.

32. The proposed project will require limited soil disturbance in order to anchor the tower's base and guy wires. The guy wire anchors will be placed into bedrock; the base of the tower will sit above ground and be secured with rods. The small quantities of disturbed soil will be packed in place on relatively flat surfaces to minimize the potential for any erosion to occur. No other soils will be disturbed for the proposed project. White-Hansen pf. at 10-11.

33. Access to the proposed site will be by existing all-terrain vehicle trails, or logging and skidder roads. The routes will remain unimproved, and will be used infrequently by persons on foot, and by snowmobiles or all-terrain vehicles that will carry project personnel to the site during the construction phase. Any access for routine maintenance of the proposed project will be scheduled to avoid wet conditions when runoff or soil erosion is more likely to occur. White-Hansen pf. at 10.

34. The areas to be cleared for the proposed tower site and guy wires will not occur on steep slopes. All felled trees and brush will remain at the site to maximize erosion prevention and sediment control at the proposed tower site. Stumps, bushes, and other bushy ground cover will be left in place. Required tree felling will be scheduled after a dry period, and trees will be felled toward higher ground. White-Hansen supp. pf. at 3.

Transportation Systems

[10 V.S.A. § 6086(a)(5)]

35. The proposed project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. The proposed project will require a small amount of truck traffic around the time of construction to transport construction materials and all-terrain vehicles to the access roads. None of the construction vehicles will be oversized. After construction, only periodic visits by single vehicles will be needed for routine maintenance. White-Hansen pf. at 13.

36. Federal Aviation Administration rules do not require lighting of structures less than 200 feet tall. The proposed towers do not exceed this height. White-Hansen pf. at 13.

Educational Services

[10 V.S.A. §§ 6086(a)(6)]

37. The proposed project will not cause an unreasonable burden on educational services. Vermont Community Wind will maintain and monitor the proposed towers with existing employees and no new employees will be added to the region. White-Hansen pf. at 13-14.

Municipal Services

[10 V.S.A. §§ 6086(a)(7)]

38. The proposed project will not cause an unreasonable burden on municipal services. The proposed project will not require the town of Ira to provide or expand governmental services. White-Hansen pf. at 14.

**Aesthetics, Historic Sites
and Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 6086(a)(8)]

39. The proposed project will not have an undue adverse impact on the scenic or natural beauty, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by findings 40 through 45, below.

40. The proposed MET tower will be placed in an undeveloped area along a ridgeline. The tower will have no lights and no visibly moving parts. Although the tower portion above the tree canopy will be visible, the steel tubular MET tower will be only 6 to 10 inches in diameter, slender enough that from more than one or two miles away it will be difficult to distinguish against the sky. The weathered galvanized tubing and gray wire used for the proposed tower will blend well with either blue-sky or cloudy-sky backgrounds. White-Hansen pf. at 6 and 14-15.

41. The tree-clearing associated with the proposed MET tower installation will be limited to one acre or less. The area surrounding the proposed site is forested land that has been logged for many years. There are no improved roads to or on the proposed site. White-Hansen pf. at 6.

42. Most of the public views of the mountain where the tower is proposed to be installed are from more than one mile away. The proposed tower will be seen from very few, if any, locations frequented by members of the public. White-Hansen pf. at 15; White-Hansen second supp. pf. at 3.

43. Vermont Community Wind is proposing to remove the tower five years after the issuance of a certificate of public good. White-Hansen pf. at 15.

44. The proposed project will not directly impact any eligible or listed historic buildings. There are no known archaeological resources in the area and the proposed project involves only a limited and temporary soil disturbance. White-Hansen pf. at 14.

45. The proposed project will not have an undue adverse effect on rare or irreplaceable natural areas. Both Northern Hardwood Forest and Montane Spruce Forest exist in the proposed project area. Northern Hardwood Forest is a large, matrix-forming community type and the less than one-acre clearing proposed for the project will not cause an undue adverse impact on this community. The Montane Spruce Forest is a community type found in large patches and the proposed project clearing on the edge of this community will not pose a threat to the integrity of the community. White-Hansen pf. at 15; exh. PWH-1 at 7.

Discussion

Some of the public comments filed raised the concern that the proposed project will have an undue adverse effect on the aesthetics or scenic and natural beauty of the area. Given the facts of this case, we conclude that the proposed wind measurement tower will not have an adverse

effect on the aesthetics of the area because: (1) the tower has a slender profile and will be difficult to see from more than a mile away; (2) most of the locations from which the tower could be seen are more than a mile away; (3) the amount of clearing necessary for installation of the tower will be insignificant; and (4) the tower is only temporary. In addition, as discussed in Finding 3, above, the proposed tower will be located in the vicinity of an existing radio tower, further diminishing the potential for undue adverse impact.

Necessary Wildlife Habitat and Endangered Species

[10 V.S.A. § 6086(a)(8)(A)]

46. There are no known wildlife habitats or endangered species in the immediate vicinity of the proposed project that would be adversely impacted by the proposed construction. A June 2009 plant inventory confirms that no state or federally-listed rare, threatened or endangered plant, or plant species considered rare or uncommon by the Vermont Non-Game and Natural Heritage Program were found at the proposed MET tower site. White-Hansen pf. at 16; White-Hansen second supp. pf. at 1-2; exh PWH-1 at 9; exh. PWH-5.

Discussion

A May 15, 2009, Board memorandum raised the question of whether, if the petition is granted, the condition of a certificate of public good should include the requirement of a pre-construction rare plant inventory verifying that rare plant species are not impacted. Vermont Community Wind has since conducted a rare-plant inventory, and thus no inventory requirement is needed in the certificate of public good.

Some of the public comments filed raised the concern that the proposed project will have an undue adverse effect on wildlife habitat. ANR indicated that it is not concerned that the proposed project will have a significant impact on wildlife and natural resources, given that Vermont Community Wind plans to access the tower site through the use of existing all-terrain, logging, or skidder trails. Given the minimal amount of clearing proposed for the temporary tower, the lack of concern about impacts on wildlife habitat by the ANR, and the completion of the rare-plant inventory, any impacts on wildlife habitat should be minimal. Therefore, the

Board concludes that the proposed project will not adversely impact wildlife habitats or endangered species.

Development Affecting Public Investments

[10 V.S.A. § 6086(a)(9)(K)]

47. The proposed project will not unnecessarily or unreasonably endanger the public or quasi-public investments in any governmental public utility facilities, services, or lands, or materially jeopardize or interfere with the function, efficiency, or safety of the public's use or enjoyment of or access to such facilities, services, or lands. There are no public lands adjacent to the proposed project and there are no public funds invested in the subject property. White-Hansen pf. at 16.

Least-Cost Integrated Resource Plan

[30 V.S.A. § 248(b)(6)]

48. Vermont Community Wind is not required to prepare an integrated resource plan pursuant to 30 V.S.A. § 218c.

Compliance with Electric Energy Plan

[30 V.S.A. § 248(b)(7)]

49. The proposed project is consistent with the *Vermont Electric Plan* because it could lead to the development of renewable energy that would help meet Vermont's electricity needs in a manner that is reliable, sustainable, affordable, and environmentally sound. White-Hansen pf. at 16-17.

50. The Department filed a determination on July 27, 2009, that the proposed project is consistent with the *Vermont Electric Plan*, in accordance with 30 V.S.A. § 202(f).

Outstanding Resource Waters

[30 V.S.A. § 248(b)(8)]

51. The proposed project will not be located on or anywhere near any segment of any outstanding resource waters. White-Hansen pf at 9; exh. PWH-1 at 2-3.

Existing or Planned Transmission Facilities

[30 V.S.A. § 248(b)(10)]

52. The proposed project is not served by any transmission facilities, existing or planned and this criterion is not applicable to the proposed project. White-Hansen pf. at 7.

V. CONCLUSION

Based upon all of the above evidence, we conclude that the proposed project will be of limited size and scope; the petition does not raise a significant issue with respect to the substantive criteria of 30 V.S.A. § 248; the public interest is satisfied by the procedures authorized by 30 V.S.A. § 248(j); and the proposed project will promote the general good of the state.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The proposed installation and operation of a temporary wind measurement tower and associated equipment by Vermont Community Wind Farm LLC on the site of Herrick Mountain in Ira, Vermont, will promote the general good of the State of Vermont in accordance with 30 V.S.A. Section 248, and a certificate of public good to that effect shall be issued.
2. Construction shall be in be in accordance with the plans as submitted in these proceedings. Any material deviation from these plans must be approved by the Board.
3. Vermont Community Wind Farm LLC shall remove the wind measurement tower and associated equipment within five years of the date of the certificate of public good in this docket.
4. All construction activities by Vermont Community Wind Farm LLC shall employ appropriate erosion prevention and sediment control measures.

5. Motorized vehicles (all-terrain-vehicles or snowmobiles) may be used to access the site only by existing all-terrain vehicle trails, or logging and skidder roads which Vermont Community Wind LLC has authority to travel. Vermont Community Wind Farm LLC shall not improve the access routes nor cause them to be improved, and any access for routine maintenance for the proposed project shall be scheduled to avoid wet conditions when runoff or soil erosion is more likely to occur.

Dated at Montpelier, Vermont this 28th day of August, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: August 28, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.